Supreme Court, U.S.
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October Term, 1969

Nos. 9 and 15

Maryland Overhead Co., Inc. and Liberty Mutual Insurance Company, Petitioners,

v.

William H. Johnson, Julia T. Klosek and Albert Avery, Respondents.

John P. Traynor and Jerry C. Cochran, Deputy Commissioners, Petitioners,

v.

William H. Johnson, Julia T. Klosek and Albert Avery, Respondents.

PETITION FOR REHEARING.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

Nos. 9 and 16

NACIREMA OPERATING CO., INC. AND LIBERTY MUTUAL INSURANCE COMPANY, *Petitioners*,

v.

WILLIAM H. JOHNSON, JULIA T. KLOSEK AND ALBERT AVERY, *Respondents*.

JOHN P. TRAYNOR AND JERRY C. OOSTING, Deputy Commissioners, *Petitioners*,

v.

WILLIAM H. JOHNSON, JULIA T. KLOSEK AND ALBERT AVERY, *Respondents*.

PETITION FOR REHEARING

William H. Johnson and Julia T. Klosek, two of the Respondents herein, respectfully pray for a rehearing of the above-captioned cases, and for reasons say:

1. Reversing the award in favor of the Respondents on the grounds set forth in the opinion deprives them of the "Equal Protection of the Laws" guaranteed by the federal Constitution.

2. In reaching its disposition, this Honorable Court disregarded the reasoning and philosophy of the cases which should have controlled its decision, viz., *Avondale*, *Calbeck*, *Gutierrez*, *O'Donnell*, *Reed and Voris*, and erroneously construed others.

3. As to the Respondent Julia T. Klosek, the Court overlooked the fact that her decedent was lifted by the ship's crane and dropped to the deck of the pier — a factual situation entitling her to recovery under *L'Hote*, as explained by *The Admiral Peoples*.

4. The Court misinterpreted what it designated as the "*Jensen* line"; if such a thing as a "line" is required the traditional water's edge is a natural, functional and logical one.

5. The Court erred in assuming piers are "permanently affixed" to the shore; even were this assumption correct, neither the navigability of the waters thereunder nor the admiralty jurisdiction of the federal courts would be affected.

ARGUMENT

1.

REVERSING THE AWARD IN FAVOR OF THE RESPONDENTS ON THE GROUNDS SET FORTH IN THE OPINION DEPRIVES THEM OF THE *"EQUAL PROTECTION OF THE LAWS"* GUARANTEED BY THE CONSTITUTION.

It must ever be kept uppermost in mind that these cases involve longshoremen members of a 16-man gang — a definite

work unit — (not individuals casually walking or driving by on a bridge) actively engaged in loading ocean-going freighters. Their **duties,** their **rest periods,** their **lunch breaks** required them to go **back and forth between the vessel and the pier.** They were doing the **same work;** they were receiving the **same pay;** they were exposed to the **same risks;** they were **employed** by the **same corporation.** They were, accordingly, entitled to the **same equal protection of the law** as were the fourteen other members of the gang.

The occurrence of the injury on the pier rather than on the ship or her gangway has no relation to the nature of the wrong inflicted on the employee or his dependents.

The Supreme Court has repeatedly pointed out that the doctrine of equal protection of the laws applies to the interpretation of federal statutes as part of the Fifth Amendment guarantee of due process of law. The Court has emphasized again and again that while the Fifth Amendment, unlike the Fourteenth, contains no explicit equal protection clause, it equally forbids "invidious discrimination" in federal legislation as a violation of due process. *Shapiro v. Thompson,* 394 U.S. 618, 641-642 (1969); *Schneider v. Rusk,* 377 U.S. 163, 168 (1964); *Bowling v. Sharpe,* 347 U.S. 497, 499 (1954). See also Justice Douglas concurring in *United States v. Seeger,* 380 U.S. 163, 188 (1965); Justice Black dissenting in *Griswold v. Connecticut,* 381 U.S. 479, 507 (1965), and *Pennsylvania R.R. Co. v. Day,* 360 U.S. 548, 554 (1959).

Equal protection of the laws secures every person "against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Sunday Lake Iron Co. v. Township of Wakefield,* 247 U.S. 350, 352 (1918).

In interpreting and applying statutes, courts must regularly "prune" from a statutory provision any language which adopts "such invidious exceptions or limitations as violate equal protection." *Simpkins v. Cone Memorial Hospital*, 323 F. 2d 959, 969 (4th Cir. 1963), cert. den. 376 U.S. 938; *Quong Ham Wah Co. v. I. A. C.*, 184 Calif. 26, 192 Pac. 1021, 1027 (1920), error dism. 255 U.S. 445 (1921); *Demmert v. Smith*, 82 F. 2d 950, 951-952 (9th Cir. 1936); *Stagg, Mather & Hough v. Descartes*, 244 F. 2d 578, 582-583 (1st. Cir. 1957); cf. *Lynch v. Overholser*, 369 U.S. 705, 710-711 (1962). So here, the courts should "prune from the statute" any implication that "upon navigable waters" does not include the deck of a pier "upon navigable waters", as well as the deck of a ship "upon navigable waters".

Mr. Justice Black touched upon this equal protection principle obliquely in the seaman's case of *Waldron v. Moore-McCormack Lines, Inc.*, 386 U.S. 724, 726 when he stated: "The basic issue here is whether there is any justification, consistent with the broad remedial purposes of the doctrine of unseaworthiness, for drawing a distinction between the ship's equipment on the one hand, and its personnel on the other."

Indeed, to ignore the statute's liberal term "upon the navigable waters" on the ground the deck of a pier although "upon the navigable waters" literally (see *Gladden v. Stockard S. S. Co.*, 184 F. 2d 510, 512 (3 Cir., 1950)) does not satisfy the Act's jurisdictional requirement unjustly discriminates so as to deny one claimant — or the same claimant at different times, for that matter — the benefits of federal law and relegates him to the less favorable treatment of state law in violation of the constitutional requirement of equal protection of the laws. It involves an invidious and unjust classification which discriminates

unreasonably **between** persons sustaining **similar injuries in similar situations** upon totally irrelevant grounds.

It is submitted this is precisely what this Court had in mind when it asserted in *Reed v. SS YAKA*, 373 U.S. 410, 415:

> "We have previously said the Longshoremen's Act 'must be **liberally construed** in conformance with its purpose, and in a way which **avoids harsh and incongruous results.**' . . . As we said in a slightly different factual context, 'All were subjected to the **same danger.** All were **entitled to like treatment** under law.' "

Coverage in the "drydock" cases has been uniformly applied with beneficent liberality. As far back as 1953 this Court in a 2-sentence Per Curiam Opinion affirmed an award for a death on the dry land transfer tracks of a marine railway 400 feet inland from the water's edge. (201 F. 2d 438, fn. 2) (There is, of course, no reference to a marine railway in the Act's language.) *Avondale Marine Ways, Inc. v. Henderson*, 346 U.S. 366, affirming 201 F. 2d 437 (5 Cir., 1953). The pier in the instant cases extended 500 feet out into and over the navigable waters of the Patapsco River.

In the 1937 case of *Maryland Casualty Co. v. Lawson*, 101 F. 2d 732, 733, the Fifth Circuit held adjacent land of a marine railway included in the coverage of the Act because "the land was part of the yard necessary to the operation of the marine railway." Isn't a pier just as "necessary to the operation" of a ship?

In 1951, Judge Soper of the Fourth Circuit, after reviewing the earlier decisions, warned against defeating the protective purposes of the Act by restrictive holdings and concluded "upon the navigable waters of the United States" should be broadly construed and the **coverage** of the Act

"should not be frustrated by needless refinements." *Newport News S. B. & D. D. Co. v. O'Hearne*, 192 F. 2d 968.

In the Fifth Circuit case of *Holland v. Harrison Bros. Drydock and Ship Repair Yard, Inc.*, 306 F. 2d 269, the court once more was dealing not with a standard drydock, but a marine railway located entirely on land. Judge Wisdom synopsized the drydock company's position, 370:

> "Harrison Brothers counters that when a worker is injured with both feet planted on dry earth (the factual situation involved) there is no federal coverage . . ."

In explaining its holding in favor of the injured workman, the court added, 372: "any meaningful definition of marine railway should include the land immediately adjacent." Similarly, any meaningful definition of "navigable waters" should include the piers immediately above them.

Finally, in *Travelers, Inc. Co. v. McManigal*, 139 F. 2d 949, 4 Cir., 1944, the court had before it a claim arising out of the death of a workman killed when he fell to the floor of the drydock during the course of its construction. Recovery was allowed, the court holding he was "constructively standing in navigable waters" at the time of the injury. "Navigable waters" were directly beneath Johnson and the decedent Klosek when the instant casualty occurred; they were actually — not constructively — "upon navigable waters".

This Court in *Voris v. Eikel*, 346 U.S. 328 (1953) unanimously admonished against interpreting the Act to bring about "harsh and incongruous" results. As a result of the decision in the instant cases, the state of the law is as follows:

Under the Longshoremen's Act, if the **same load** attached to the **same crane** involved in these proceedings struck the

same longshoreman during the course of his employment, the coverage would be as indicated:

1. In the hold	Covered
2. On deck	Covered
3. On the gangway	Covered
4. In a boat under the pier	Covered
5. In a boat alongside the ship	Covered
6. In a boat alongside the pier	Covered
7. Knocked from the ship to the pier	Covered
8. Knocked from the pier into the water	Covered
9. Lifted up and dropped back onto pier	Covered

There is recognized coverage under the Act for all nine of these factual situations. If, however, the longshoreman was struck on the pier and merely knocked horizontally — but not sufficiently far to fall into the water — the injury or death is not covered.

The harshness, the incongruity of this discrimination in an employer-employee oriented compensation statute is shockingly offensive to and violative of the equal protection of the laws requirement of the Constitution. There is no specific exclusion of pier side injuries in the Act. Congress did not intend such anomalies and such bizarre results — to perpetuate the hoax of a part-time act. Even if it did, such discrimination must fall before the majestic requirement of the equal protection of our laws.

2.

IN REACHING ITS DISPOSITION, THIS HONORABLE COURT DISREGARDED THE REASONING AND PHILOSOPHY OF THE CASES WHICH SHOULD HAVE CONTROLLED ITS DECISION, VIZ: *AVONDALE, CALBECK, GUTIERREZ, O'DONNELL, REED* AND *VORIS*, AND ERRONEOUSLY CONSTRUED OTHERS.

What might be said to be the precursor of this case was the seaman's claim in *O'Donnell v. Great Lakes Co.*, 318

U.S. 36 (1943). O'Donnell, a deckhand, filed suit under the Jones Act to recover for injuries sustained ashore while assisting in the repair of a gasket connection of a suction pipe being used to unload a cargo of sand from the vessel. The employer argued — as it did in the instant cases — that the employee was not covered under the maritime statute because the injury was sustained on land. Speaking for a unanimous court, Mr. Chief Justice Stone, held the injury covered and added, 39:

> "Congress, in the absence of any indication of a different purpose, must be taken to have intended to make them applicable so far as the words and the Constitution permit, and to have given them the full support of all the constitutional power it possessed. Hence **the Act** allows the **recovery** sought **unless** the **Constitution forbids it.**"

The decision in the instant cases should be the same as that reached in *O'Donnell*, viz., that recovery is allowed unless the Constitution forbids it; there is no such ban disqualifying these claims.

Avondale, a 1953 decision of this Court, unanimously held an injury sustained 400 feet inland on a marine railway was compensable under a liberal interpretation of the word "drydock". Since the law has been interpreted liberally with respect to the "drydock" test of jurisdiction, it should be interpreted just as liberally with reference to the "upon navigable waters" test of jurisdiction.

As Mr. Justice Brennan, the author of *Calbeck v. Travelers, Inc. Co.*, 370 U.S. 114 (1962) appreciated, the philosophy of this decision compels an affirmance of the instant cases. Inter alia, this forward looking opinion after reviewing earlier decisions and analyzing the "twilight zone" creation of this Court asserts:

> "Our conclusion is that Congress invoked its constitutional power so as to **provide compensation for all**

injuries sustained by employees on navigable waters whether or not a particular injury might also have been within the constitutional reach of a state workmen's compensation law" (117).

"The elaborate provisions of the Act, viewed in the light of prior Congressional legislation as interpreted by the Supreme Court, leaves no room for doubt, as it appears to us, that **Congress intended to exercise to the fullest extent all the power and jurisdiction it had over the subject-matter**. . . ." (130; quoted with approval from *DeBardeleben Coal Corp. v. Henderson* (La.) 142 F. 2d 481, 483 and 484).

"In the application of the act, therefore, the broadest ground it permits of should be taken" (130; also with approval from *DeBardeleben*).

Neither the presence of a third party right nor the availability of a concurrent state remedy alluded to in a footnote of the opinion divests Congress of its authority to legislate in this field or the Longshoremen's Act of its broad maritime employment coverage.

The opinion in *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206 (1963) was written by the same Justice who authored the opinion in the instant cases. It is difficult, if not impossible, to reconcile the two decisions. *Gutierrez* dealt with a third party claim of a longshoreman injured on the pier some 100 feet or more from the side of a ship when he slipped on some beans which had spilled onto the pier from broken bags during the course of unloading. The opinion, representing the views of eight members of the court, asserted, 215:

> "We . . . hold that the duty to provide a seaworthy ship and gear, including cargo containers, applies to **longshoremen unloading the ship whether they are standing aboard ship or on the pier.**"

Similarly, the protection intended by the Longshoremen's Act should apply, whether the longshoreman engaged in

loading or unloading is "standing aboard ship or on the pier."

Reed v. Steamship YAKA, 373 U.S. 410 (1963), a third party action by a longshoreman, decided in favor of the longshoreman by a tally of 7 to 2, furnishes us with these pregnant quotes:

> "But we cannot now consider the wording of the statute alone. We must view it in the light of our prior cases in this area . . . the holdings of which have been left unchanged by Congress" (414).
>
> "We have previously said that the Longshoremen's Act 'must be liberally construed in conformance with its purpose, and in a way which **avoids harsh and incongruous results.** We think it would produce a harsh and incongruous result, one out of keeping with the **dominant intent of Congress to help longshoremen**, to distinguish between liability to longshoremen injured under precisely the same circumstances because some draw their pay directly from a stevedoring company doing the ship's service" (415).
>
> "As we said in a slightly different factual context, **'All were subjected to the same danger. All were entitled to like treatment under law'** " (415).

The opinion in the instant cases relied very heavily on *Swanson v. Marra Bros., Inc.*, 328 U.S. 1 (1946) and, to a certain extent, on *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352. The reliance was misplaced. In the instant cases, the majority opinion stated that *Swanson* was an action under the Longshoremen's Act; that is an error — the longshoreman tried to recover by invoking the Jones Act, not the Longshoremen's Act. The express holding was that a longshoreman could not recover in a suit under the Jones Act. Were a longshoreman to institute a third party action today based on the facts of *Swanson* — a life raft came loose from its mooring, fell on and injured him on the

pier — he could recover. There is, admittedly, a dictum in *Swanson* about a pier being an extension of land.

It is interesting to note that the same term of court that produced *Swanson* also gave the admiralty bar *Seas Shipping Co. v. Sieracki*, 326 U.S. 85, the landmark case which held the seaworthiness doctrine applicable to longshoremen as well as seamen. In the slightly more than two decades it has been in the reports, *Sieracki* has become one of the most cited of maritime cases; *Swanson* has been relegated to the limbo of forgotten decisions.

Rodrigue is clearly distinguishable and should have no direct bearing on the disposition of the instant cases. The issue in *Rodrigue* and its companion case was which of two federal statutes controlled, the Death on the High Seas Act or the Outer Continental Shelf Lands Act which adopted, in part, state law. Both lower courts held the Seas Act offered the exclusive remedy; this Court reversed. The legislative history was crystal clear in *Rodrigue* — a provision in the original draft to treat the platforms as "ships" was completely eliminated.

Traditionally, drilling for oil has been a land based activity; traditionally, piers have been indispensable adjuncts of navigable waters and the ships they serve. In recognition of this Court's continuing solicitude for dependents of workmen killed in the course of their employment, Mr. Justice White adverted to the pro-workman economic consideration the Louisiana State Law was far more liberal to the widows and children. The converse is true in the instant cases; the state remedy is poverty oriented.

3.

AS TO THE RESPONDENT JULIA T. KLOSEK, THE COURT OVERLOOKED THE FACT THAT HER DECEDENT WAS LIFTED BY THE SHIP'S CRANE AND DROPPED TO THE DECK OF THE PIER — A FACTUAL SITUATION ENTITLING HER TO RECOVERY UNDER *L'HOTE*, AS EXPLAINED BY *THE ADMIRAL PEOPLES*.

In its opinion, this Court failed to differentiate between the claims of Julia T. Klosek, widow of Joseph J. Klosek, and those of the other two Respondents. In the other claims, the surviving longshoremen were crushed against the side of the gondola car. Klosek was lifted by the ship's gear and dropped to the pier. Under the authority of *L'Hote v. Crowell*, 54 F. 2d 212, subsequently ratified — as to liability or coverage — in *The Admiral Peoples*, 295 U.S. 649, 653, 654 (1935) she is entitled to recover.

It was hoped it would not be necessary to emphasize this distinction — which was reserved in our Brief — because of the policy approach expected of this Court. This important distinction is now expressly called to the attention of the Court.

4.

THE COURT MISINTERPRETED WHAT IT DESIGNATED AT THE "*JENSEN* LINE"; IF SUCH A THING AS A "LINE" IS REQUIRED THE TRADITIONAL WATER'S EDGE IS A NATURAL, FUNCTIONAL AND LOGICAL ONE.

In some of this Court's opinions, there have been inexact references to a so-called "*Jensen* line" or "*Jensen* line of demarcation" without any precise definition of what is meant by the term. In *Southern Pacific Company v. Jensen*, 244 U.S. 205 (1917) a longshoreman was killed while operating his electric truck on a ship's gangway; this Court took away from his widow an award entered in her favor under the New York State Compensation Act on the ground the application of state laws would defeat the "uniformity

and consistency at which the Constitution aimed" in the admiralty field. This Court refused to sanction the recovery because to do so would interfere "with the proper harmony and uniformity" of maritime law.

Three years later, in *Knickerbocker Ice Company v. Stewart*, 253 U.S. 149, this Court again upset a New York State award in favor of the widow of a worker who drowned on the ground that authorizing the States to enact covering statutes would destroy the "harmony and uniformity which the Constitution not only contemplated, but actually established. . . ." The final case of the trilogy was *Washington v. Dawson & Co.*, 264 U.S. 219 decided in 1924. This Court affirmed a denial of benefits to the dependents of a longshoreman killed in the hold of a ship entered under the Workmen's Compensation Act of California. In the words of the Court:

> "The subject is national. Local interests must yield to the common welfare. The Constitution is supreme."

If *Jensen* set a "line of demarcation" the line was only to restrain state activity in the forbidden area; it was not a limitation upon the right of the government to act in this sphere. (An application of *Jensen* would prevent the enforcement of a state statute in the maritime field.) In fact, *Dawson* expressly invited such action by the federal government a few years later. If there is such an entity as the "*Jensen* line" it must be the water's edge — the high water mark sometimes considered a possible terminus of admiralty jurisdiction; it certainly is not the pier's edge.

The holding of the Court that a pier is an extension of the land which, inferentially, destroys the navigability of the waters over which it extends, flies right in the teeth of earlier decisions of this body which so jealously safeguarded and enforced federal dominion over "navigable

waters". In *United States v. Appalachian Electric Power Co.*, 311 U.S. 377, 1941, this Court unequivocally held:

> **"When once found to be navigable, a waterway remains so."**

There is no question the waters of the Patapsco River were navigable waters long before — and at the time of — the adoption of our Constitution. The construction of the High Pier in this century did not abolish their navigability.

As far back as 1875, in *Atlee v. N. W. Union Packet Co.*, 21 Wall 389, this Court held that piers are aids to navigations upon navigable waters and an unauthorized pier was an unlawful structure. Another leading case stressing the breadth of the navigability concept is *Economy Light & Power Co. v. United States*, 256 U.S. 113, 1921.

More recent cases which treat of this subject tangentially are *United States v. California*, 381 U.S. 139 (1965) which applied the low-water mark as the determining line for federal sovereignty over submerged lands and *Hughes v. Washington*, 389 U.S. 290, which held that the rights of an owner of federally-granted ocean-front property to accreted lands was governed by federal and not state law.

Finally, in *United States v. Louisiana*, 389 U.S. 155 (1967) there is an implicit repudiation of the fictional theory a pier is an extension of land. In a 6-1 opinion it was decided a **jetty** was **not** an **extension of land** to push the state's boundary beyond the normal 3 marine league mark. The Court held the **natural shoreline** of 1845 was the **correct line of demarcation** for measuring the three marine leagues. Since a pier does not extend the jurisdiction of a state — the correct measurement is still from the natural shoreline — the fiction a pier is an extension of land must fall before the consistent interpretation of navigable waters insisted on by this Court.

5.

THE COURT ERRED IN ASSUMING PIERS ARE "PERMANENTLY" AFFIXED TO THE SHORE; EVEN WERE THIS ASSUMPTION CORRECT, NEITHER THE NAVIGABILITY OF THE WATERS THEREUNDER NOR THE ADMIRALTY JURISDICTION OF THE FEDERAL COURTS WOULD BE AFFECTED.

In its opening sentence, as well as elsewhere through the opinion, the Court refers to "piers permanently affixed to shore". To give the lie to that assumption all one need do is stroll along the waterfront of any large harbor in the United States. New York City recently announced that 149 piers were being torn down. Vessels become obsolete and are scrapped; piers become rotted and deteriorated, and are torn down. No doubt a walk along the Potomac would convince a person that piers are quite temporary structures.

Irrespective of its permanency or absence of it, a pier does not change the boundaries of waterways one iota; the shoreline remains in its natural state. Navigable waters — the determinant of jurisdiction under the Longshoremen's Act — are established by the natural, historic boundaries of streams in their natural state irrespective of the presence or absence of man-made "fingers" which jut out above the surface of the waters.

Instead of being an extension of land, a pier which is in the nature of an aid to navigation is an extension of the ship, an oversized gangplank. A pier in the maritime sense cannot be conceived of except in connection with navigable waters and a ship. Servicing a vessel — facilitating the loading or discharging — is its raison d'etre. As *Johnson Co. v. Garrison*, 234 U.S. 251, 268, a 1914 decision, reminds us "the mooring of a vessel is as necessary as its movement." In the immigration case of *U. S. v. Yee Nee How*, 105 F. Supp. 517 (1952) the District Court for the Southern District of California came to the common sense conclusion that a pier is an extension of the ship.

Part of this thes has been treated in more detail in Point 4, *supra.*

CONCLUSION

The seaman's sea orthiness doctrine has come a long way since its modes beginning in 1903; similarly the Longshoreman's seawort ness doctrine has made great strides since its promulgati n in 1946. The seaworthiness doctrine and the Longshoren n's Act are both traceable to a common origin — a deep outed solicitude for maritime workers who spend their live in such a perilous and arduous calling.

The seaworthines doctrine has grown and developed down through the y ars; so, too, must the Longshoremen's Act live, grow and e pand with the broadening concepts of Admiralty jurisdicti n. It cannot remain **perpetually fossilized in** the form o what may have been the **Admiralty concepts of 1927.** T e mighty 43-year old oak cannot be thrust back into its mbryonic acorn.

The decision in th ese consolidated cases is particularly disturbing not only because of its harshness, incongruity and inequity, but a so because it marks the Court's first restrictive holding i maritime compensation cases since its self-confessed "ill starred" *Jensen* case and its progeny, *Knickerbocker Ice* a d *Dawson.* Since 1924 there has been a steady procession of decisions in which this Court has manifested its solici ous concern and compassion for maritime workers and t eir dependents.

The "score card" o some of the more notable compensation cases is:

Parker v. Motor Boat Sales, 314 U.S. 244 (1941)	9-0
Davis v. Departm ent of Labor, 317 U.S. 249 (1942)	7-1
Avondale, supra (1953)	8-0
Voris, supra (19 3)	9-0

Calbeck, supra (1962)	6-2
Gondeck v. Pan American World Airways, Inc., 382 U.S. 25 (1965)	7-1
Banks v. Chicago Grain Trimmers Association, Inc., 390 U.S. 459 (1968)	8-0

A comparable analysis could be compiled with respect to seamen and third party longshoremen claims. Illustrative are:

O'Donnell, supra (1943)	9-0
Hahn v. Ross Island Sand & Gravel Co., 358 U.S. 272 (1959) (Option to choose more favorable law)	5-2
Reed, supra (1963)	7-2
Gutierrez, supra (1963)	8-1

Underscoring that restrictive holdings have no place in the application of maritime law and Admiralty principles in personal injury and death actions, Justice Chase stated in *The Sea Gull* (Cir. Ct. Md., 1865) 21 Fed. Cases, page 909, Case No. 12578:

> ". . . certainly it **better** becomes the humane and liberal character of proceedings **in Admiralty to give than to withhold the remedy**, when not required to withhold it by established and inflexible rules."

The Court is urgently petitioned to grant a rehearing, reconsider and reverse its earlier action in order that this 1970 Court may not be criticized for another ill-starred *Jensen* based decision depriving the widow and dependents of a longshoreman of the award mandated by the Court of Appeals for the Fourth Circuit, one of the most erudite Circuits in Admiralty matters.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Petition for Rehearing were served on the following attorneys for all parties herein by mailing them, postage prepaid, on this 16th day of January 1970.

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